CARRIERS: LIMITATION OF LIABILITY FOR INJURIES TO PASSENGERS.—When a common carrier undertakes to carry a passenger for hire, the courts hold universally that the carrier cannot limit its liability by contract or otherwise.[1] In order that a person may be considered as a passenger for hire it is not necessary for him to pay the regular fare. The giving of any valuable consideration is sufficient.[2] And if there is an actual consideration, it is immaterial that the passenger is carried by virtue of a so-called pass, even though the pass may state upon its face that it is a mere gratuity and that the person accepting it agrees that the railroad company shall not be liable for any injuries to the holder.[3] Such an attempt on the part of the carrier to limit its liability is void as against public policy. If, however, the transportation is purely gratuitous, the carrier can relieve itself from liability.[4]

In the case of *Hageman v. Puget Sound Electric Railway*[5] the plaintiff in her complaint alleged that at the time she entered the employment of the company, she was promised transportation over its lines as part of the consideration for her services. But when she applied for transportation she was forced to sign a printed application by which she acknowledged and agreed that the pass should be a pure gratuity, and that the company should be released from all liability for injuries to her while riding upon the cars. The Washington Supreme Court had in two previous cases adopted the rule that if the pass was a gratuity, the carrier could make a valid stipulation releasing itself from liability,[6] but if the pass was given as part of the consideration for the employee's services such a stipulation was void.[7] The court in the present case, however, sustained a general demurrer to the complaint on the ground that even though transportation did originally constitute a part of the consideration for the plaintiff's services, still that agreement was waived and a new contract entered into when the pass was applied for.

It is difficult to see how the additional element of an application makes a new and valid comract when the same contract

---

C. 514; Chicago & Alton R. R. Co. v. U. S. (1907), 156 Fed. 558, 84 C. C. A. 324, 26 L. R. A. (N. S.) 551.

[1] New York Central R. R. Co. v. Lockwood (1873), 84 U. S. 357, 21 L. Ed. 627.

[2] Grand Trunk R. R. Co. v. Stevens (1877), 95 U. S. 655, 24 L. Ed. 535.

[3] Camden and Atlantic R. R. Co. v. Bausch (Pa., 1887), 7 Atl. 731; Williams v. Oregon Shortline R. R. Co. (1898), 18 Utah 210, 54 Pac. 991, 72 Am. St. Rep. 777.

[4] Northern Pac. R R. v. Adams (1903), 192 U. S. 440, 48 L. Ed. 513, 24 Sup. Ct. Rep. 408.

[5] (Wash., July 17, 1914), 141 Pac. 1027.

[6] Muldoon v. Seattle Ry. Co. (1893), 7 Wash. 528, 35 Pac. 422, 22 L. R. A. 794, 38 Am. St. Rep. 901, reaffirmed in (1894), 10 Wash. 311, 38 Pac. 995, 45 Am. St. Rep. 787.

[7] Harris v. Puget Sound Electric Ry. (1909), 52 Wash. 289, 100 Pac. 838.

printed upon the pass alone had been held to be invalid in the earlier case.[8] If the plaintiff had actually earned the transportation as part of the consideration for her employment, the subsequent contract which waived her rights was void. When a valuable consideration actually exists, the courts should look at the facts as they are and should not be misled by a colorable stipulation which the employee is induced to make. In the present case the allegation of actual consideration seems sufficient to present an issue for the jury.

E. J. S.

CONSTITUTIONAL LAW: FEDERAL POLICE POWER.—A recent act of Congress providing for the protection and preservation of "migratory birds", was held by a federal court of the United States to be unconstitutional in the case of *United States v. Shauver.*[1] The act[2] provided that all migratory birds "shall hereafter be deemed to be within the custody and protection of the United States government, and shall not be destroyed or taken contrary to regulations hereinafter provided". The act further authorized the Department of Agriculture "to adopt suitable regulations to give effect to the previous paragraph, by prescribing and fixing closed seasons", and making it unlawful to kill during those closed seasons.

It is submitted the court was correct in its conclusion. The protection of game is a proper subject for the exercise of the police power which is inherent in the states.[3] That the United States may exercise power analogous to the police power of the states it is necessary that such power be derived from some one of the expressed or implied powers given it by the constitution.[4] The "White Slave Act" was upheld under the power of Congress to regulate commerce.[5] The "Lottery Act" was upheld on the same ground.[6] Having exclusive control over the postal system, it has power to prohibit the use of the mails for the transmission of lottery advertisements.[7]

There are only two sources of power under which this "migratory birds" provision could be justified. First, under the power

---

[8] Supra, note 7.

[1] (May 25, 1914), 214 Fed. 154.

[2] 37 Stat. at L. 828, 847, ch. 145.

[3] 19 Cyc. 1006; Ex parte Maier (1894), 103 Cal. 476, 37 Pac. 402.

[4] Black's Const. Law, 3d ed., p. 202; Martin v. Hunter (1816), 1 Wheat. 304, 326, 4 L. Ed. 97; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377.

[5] Hoke v. United States (1913), 227 U. S. 308, 57 L. Ed. 523, 33 Sup. Ct. Rep. 281.

[6] Champion v. Ames (1903), 188 U. S. 321, 47 L. Ed. 492, 23 Sup. Ct. Rep. 321.

[7] In re Rapier (1892), 143 U. S. 110, 36 L. Ed. 93, 12 Sup. Ct. Rep. 374.